

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

Ex parte ERIN M. BOURKE-DUNPHY and JEFF A. ZIMNIEWICZ

Appeal No. 2006-0236  
Application No. 09/710,143

HEARD: FEBRUARY 8, 2006<sup>1</sup>



Before THOMAS, JERRY SMITH and SAADAT, Administrative Patent Judges.

THOMAS, Administrative Patent Judge.

DECISION ON APPEAL

Appellants have appealed to the Board from the examiner's final rejection of claims 1 through 21.

Representative claim 1 is reproduced below:

1. A system that facilitates configuration of a software system being installed, comprising:

a setup component that receives information indicative of a location scenario related to where the software system is being installed, configuration characteristics for the software system determined based at least in part on the location scenario.

<sup>1</sup>The hearing was conducted as a telephone hearing at appellants' request.

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The following references are relied on by the examiner:

|                        |           |              |
|------------------------|-----------|--------------|
| Amburg et al. (Amberg) | 5,963,743 | Oct. 5, 1999 |
| Jones et al. (Jones)   | 5,666,501 | Sep. 9, 1997 |

Claims 1, 2, 5 through 9, 13 through 16 and 19 through 21 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Amburg. Claims 3, 4, 10 through 12 and 17 through 20 stand rejected under 35 U.S.C. § 103. As evidence of obviousness, the examiner relies upon Amburg in view of Jones.

Rather than repeat the positions of the appellants and the examiner, reference is made to the brief, the reply brief and the supplemental reply brief for appellants' positions, and to the answer and supplemental answer for the examiner's positions.

#### OPINION

Generally for the reasons set forth by the examiner in the answer, as expanded upon here, we sustain the rejections of all claims on appeal.

The top of page 3 of the principal brief on appeal indicates that all claims fall together. The actual arguments presented in the brief and various reply briefs consider each independent claim together and to be consistent with the subject matter generally of independent claim 1. No arguments are presented to us as to any dependent claim rejected under 35 U.S.C. § 102.

Moreover, as to the rejection of various dependent claims under 35 U.S.C. § 103, appellants only address this issue at page 5 of the principal brief on appeal. There they do not argue that Amberg and Jones are not properly combinable within 35 U.S.C. § 103, only, in effect, that if combined they do not meet the subject matter of the independent claims on appeal in the same manner as the independent claims are argued under 35 U.S.C. § 102 in the first stated rejection.

At pages 4 and 5 of the principal brief, appellants do not argue the set up component feature of independent claim 1 on appeal but only the alleged absence of configuration characteristics based in part upon the location scenario. It is recognized that a network is utilized and it is also urged that this network is only used for communication purposes. Amberg is stated to simply disclose configuring a target system solely according to a customer's order. On the other hand, the reply brief and supplemental reply brief argue both the set up component and the configuration characteristics of representative independent claim 1 on appeal.

For his part, the examiner states that the set up component includes an indicator that specifies the target system 160 in figure 1, for example, of Amberg. The examiner maintains the

view that each customer order for a specific target computer system is equivalent to identifying each "location scenario" to the extent claimed and correlates this feature to figure 3A element 300 of Amberg. For emphasis, the examiner adds at page 2 of the supplemental answer that "[b]ecause in Amberg et al., at least each order, build-to-order, must return back to a unique identifier (specific location scenario) according to a customer-specific information," identifying column 5, lines 54-65, further indicating that the build-to-order is provided to the software installation system according to column 5, lines 47 through 50.

Amberg shows distinct embodiments in figures 1 and 2. The nature of the configuration in terms of hardware and software is embodied within the step disk 150 generated in figure 1 based upon the customer's order 92 through the operation of the step maker 140 as argued by the examiner. This yields a sequencing program 204 which, apparently may be placed within the physical components of a target system 160 and actually configured, such as on a factory floor. The example in figure 2 does not utilize the step disk 150 of figure 1 and eliminates the step maker 140 permitting the actual remote generation of a descriptor file, the remote generation of a sequencing program 204 and the remote installation of software for a target system that appears to be

remotely located from the factory or the various file servers shown in figure 2. Therefore, it seems apparent that there exists in Amberg component setup information that must necessarily receive as a component information indicative of a location scenario, that is, at least where the physical location is of the target computer 160 and where the actual software is to be installed. This installation operation or configuration of the actual software occurs on the factory floor or remotely based upon the initial customer order which includes the broadly defined "location scenario" information.

In an abstract sense, therefore, a given customer order is not applicable to any non-targeted computer no matter where it is physically located. In other words, the context of operability within the figure 1 and figure 2 embodiments is with respect to the targeted computer located in a given physical location that apparently is known in accordance with the customer's order and the generation of the descriptor file 96.

Other customer specific information that appears to be provided has been identified by the examiner at column 5. These include the customer specific information at column 5, lines 63 through 65 identifying the customer's address and telephone number, which implies a general physical location, all of which

is part of the base assembly record or BAR file 330 in figure 3A and 360 in figure 3B. The broadly defined "location scenario" of the claims on appeal does not require that the customer placing an order has to be at the physical location of the computer where it is fabricated and/or where the software is installed. Moreover, the particular order allows the customer to choose a particular computer manufacturer and particular computer families and to otherwise specify the "type" of target computer at column 3, line 39. Types of computers and computer families include servers, desktop computers, laptop computers and those specifically designed for media use or scientific use. Furthermore, column 7 and figure 7 of Amberg permit a modification of the existing family of computers within the database to include the addition of new families of computers. The ability of the customer to specify the physical and software components of a given computer permits the user to select or choose the location where it is to be physically located and/or shipped once it is fabricated/configured.

Amberg's descriptor file 96 in figures 1 and 2, for example, correlates according to the discussion to the system descriptor record. As recognized in the reply brief and supplemental reply brief, the data associated with this identifies the embodiment to

be used in figure 1 or figure 2 of Amberg as well as contact information and possibly the physical location of the customer. In accordance with the "is being installed" language of independent claim 1 on appeal, it is to be noted that this feature is set forth in terms of "to be installed" in the other independent claims 7, 8 and 15 on appeal. The showings in figures 1 and 2 meet these limitations. According to Amberg's teachings, the location of the actual customer may be where the software is actually installed within the hardware of the computer system as well as the factory floor or any other physical location.

As noted earlier in this opinion, appellants appear to argue the features of the independent claims in the context of the rejection of various dependent claims under 35 U.S.C. § 103 at page 5 of the principal brief. We note further here that Jones teaches the location component and a location scenario for a receiving computer as well as the actual configuration characteristics including location scenario information to buttress those of Amberg. As argued by the examiner, figure 2 is illustrative of the complementary teachings in Jones. The selectability of various software bundles for a user to select from an element 220 in figure 2 that includes development,

administration, AI, and maintenance functionalities, each of which may correlate to different physical locations or applications of use.

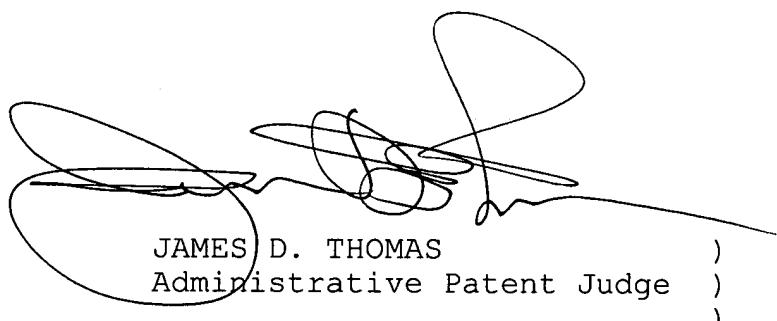
Finally, we note in passing that appellants' observations at specification pages 1 and 2 with respect to background prior art appear to be inclusive of the subject matter set forth broadly in the independent claims on appeal. The user is given the ability to selectively install different applications or component software elements including the capability as disclosed of distinguishing one server at a corporate central Office from additional servers located at remote locations. At specification page 1, lines 22 through 25 it is stated that "[t]he particular application and/or services that should be installed at each server in the organization may vary as a function of the type of organization and the performance objectives of the administrator that implements the installation."

In view of the foregoing, the decision of the examiner rejecting various claims under 35 U.S.C. § 102 and 35 U.S.C. § 103 is affirmed.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED



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*Jerry Smith* )  
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